

## Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 DODE-00 IO-13 L-03 CAB-02  
CIAE-00 COME-00 DOTE-00 INR-07 NSAE-00 CIEP-01 FAA-00  
SS-15 NSC-05 PM-04 /071 R

DRAFTED BY USAF:CHART, DC/XOXXI  
APPROVED BY EB/OA/AVP:AJWHITE  
EB/OA/AVP:JSGRAVATT  
IO/TRC:CHARTLEY  
EUR/NE:NACHILLES (SUBS)  
L/EB:PMICKEY (SUBS)  
-----150609Z 043349 /20  
R 150148Z FEB 77  
FM SECSTATE WASHDC  
TO AMEMBASSY LONDON  
AMCONSUL MONTREAL

C O N F I D E N T I A L STATE 033664

MONTREAL FOR US REP ICAO

E.O. 11652: XGDS-1

TAGS: EAIR, ICAO, UK, DA, IC

SUBJECT: UK PROPOSAL TO CHARGE MILITARY AIRCRAFT  
FOR UTILIZATION OF DEN/ICE JOINTLY FINANCED FACILITIES

REF: (A) LONDON 11884 (75); (B) MONTREAL 114  
(NOTAL)

1. REFTEL (A), REPORTED THAT THE U.K. CIVIL AVIATION  
AUTHORITY HAD CONFIRMED THAT THE U.K. MINISTRY OF  
DEFENSE HAD ACCEPTED RESPONSIBILITY FOR PAYMENT OF  
OVERFLIGHT CHARGES OF "USAF AIRCRAFT" IN SHANWICK OCEANIC  
CONTROL AREA TO INCLUDE ALL PAST CHARGES. THIS LANGUAGE  
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WAS EXTENDED BY EMBASSY RESPONSE TO "ALL U.S. MILITARY  
AIRCRAFT". REFTEL (B) REPORTED THAT U.K. REP TO ICAO  
ADVISED U.S. REP THAT U.K. WILL PROPOSE AT THE ICAO  
DEN/ICE III CONFERENCE, CONVENING 1 MARCH IN MONTREAL,  
THAT MILITARY AIRCRAFT BE CHARGED FOR UTILIZATION OF  
DEN/ICE JOINTLY FINANCED FACILITIES. IN LATER CONVERSATION  
WITH U.S. REP IN WASHINGTON IT WAS DISCOVERED THAT THE

U.K. REP USED SHANWICK OCEANIC CONTROL CHARGES AS AN EXAMPLE OF MILITARY AIRCRAFT CHARGES THAT HAD CAUSED NO PROBLEM. THE U.S. POSITION ON THE PROPOSED DEN/ICE CHARGES FOLLOWS:

2. THE SUBJECT OF CHARGING MILITARY AIRCRAFT FOR THE USE OF THE SERVICES FINANCED UNDER THE DEN/ICE JOINT FINANCING AGREEMENTS INVOLVES TWO QUESTIONS: CHARGES FOR FLIGHT IN INTERNATIONAL AIRSPACE, WHICH TO ONE EXTENT OR ANOTHER WOULD INCLUDE PRACTICALLY ALL FLIGHTS IN THIS AREA; AND FLIGHTS IN SOVEREIGN AIRSPACE OF DENMARK AND ICELAND. PERTINENT TO BOTH OF THESE SITUATIONS IS THE EXPRESS EXCLUSION, UNDER ARTICLE 3 OF THE CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION, OF STATE AIRCRAFT, WHICH INCLUDES MILITARY AIRCRAFT, FROM THE SCOPE OF THE CONVENTION AND THUS FROM ICAO RESPONSIBILITY AND AUTHORITY.

A. AS A MATTER OF POLICY, IN ORDER TO FULFILL ITS RESPONSIBILITY UNDER ARTICLE 3 (D) OF THE CHICAGO CONVENTION TO ASSURE THAT U.S. MILITARY AIRCRAFT "HAVE DUE REGARD FOR THE SAFETY OF NAVIGATION OF CIVIL AIRCRAFT", THE USG DIRECTS U.S. MILITARY AIRCRAFT OPERATING IN INTERNATIONAL AIRSPACE TO OBSERVE ICAO PROCEDURES WHEN COMPATIBLE WITH THE MISSION. THIS IS NOT BASED ON ANY INTERNATIONAL COMMITMENT OF THE U.S. AND IS A PURELY VOLUNTARY AND DISCRETIONARY ACT INTENDED AS AN ACCOMMODATION TO THE SAFETY OF INTERNATIONAL CIVIL AIRCRAFT. THESE PROCEDURES ALSO AID FIR AUTHORITIES IN

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MEETING THEIR RESPONSIBILITIES FOR FLIGHT SAFETY. SINCE THE CHICAGO CONVENTION DOES NOT APPLY TO MILITARY AIRCRAFT, AND IN VIEW OF THE LACK OF SOVEREIGNTY OVER INTERNATIONAL AIRSPACE, THERE IS NO LEGAL REQUIREMENT TO PAY CHARGES FOR THE FLIGHT OF MILITARY AIRCRAFT THROUGH INTERNATIONAL AIRSPACE, THE CIVILIAN AIR TRAFFIC CONTROL OF WHICH HAS BEEN ASSIGNED TO A COUNTRY BY ICAO AS A MATTER OF INTERNATIONAL CONVENIENCE AND AIR SAFETY, BUT WITHOUT IN ANY SENSE INVOLVING THE SOVEREIGN RIGHTS OF THE COUNTRY OR COUNTRIES CONCERNED. IT IS THEREFORE U.S. POLICY TO DECLINE PAYMENT OF ANY CHARGES FOR FLIGHTS OF MILITARY AIRCRAFT IN INTERNATIONAL AIRSPACE REGARDLESS OF THE AVAILABILITY OF AIR NAVIGATIONAL AIDS IN SUCH AIRSPACE.

B. WHEN MILITARY AIRCRAFT ARE OPERATING WITHIN THE SOVEREIGN TERRITORY OF ANOTHER NATION THE U.S. HAS CONSISTENTLY ADVOCATED THE INTERNATIONAL PRINCIPLE THAT ALL STATE AIRCRAFT, INCLUDING MILITARY AIRCRAFT, SHOULD

BE EXEMPTED FROM SET FEES NORMALLY IMPOSED ON CIVIL AIRCRAFT. MILITARY AIRCRAFT ARE NORMALLY REQUIRED TO PAY ONLY FOR SPECIFIC SERVICES RENDERED UPON REQUEST, SUCH AS CHARGES FOR SERVICING OR MAINTENANCE OF AIRCRAFT, TOWING CHARGES, OR TURNING ON AIRPORT LIGHTS FOR A NIGHT LANDING. FINALLY, U.S. MILITARY FLIGHTS IN SOVEREIGN AIRSPACE OVER ICELAND AND GREENLAND ARE PRIMARILY IN SUPPORT OF FRIENDLY FORCES STATIONED THERE, AND BASED ON ARRANGEMENTS MADE THROUGH APPROPRIATE MILITARY OR DIPLOMATIC CHANNELS. THE UNENCUMBERED ABILITY TO SUPPLY THESE FORCES IS AN INHERENT, BASIC PART OF THE AGREEMENT WHICH PERMITS THE EXISTENCE OF FOREIGN MILITARY INSTRUMENTS ON SOVEREIGN TERRITORY. ON OTHER OCCASIONS THE U.S. MILITARY FLIGHTS OFTEN PROVIDE DIRECT SUPPORT FOR THE HOST COUNTRIES MILITARY. IN EITHER SITUATION THE U.S. WHEN IT AGREES TO STATION FORCES OR SUPPLY FORCES IN A FOREIGN NATION DOES NOT  
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PLAN FOR OR ACCEPT THE CONCEPT OF CHARGES FOR OVERFLIGHT OR TAXES AS DISTINGUISHED FROM REASONABLE CHARGES FOR SERVICES REQUIRED AND RENDERED.

3. REQUEST EMBASSY CONVEY THE ABOVE TO HMG IN ORDER AVERT U.K. REP TO ICAO FROM MAKING PROPOSAL AT THE DEN/ICE III CONFERENCE TO CHARGE MILITARY AIRCRAFT FOR UTILIZATION OF JOINTLY FINANCED FACILITIES.

4. FOR U.S. REP ICAO: TELEGRAMS CONCERNING SHANWICK OCEANIC CONTROL CHARGES AND INFORMATION ON U.S. MILITARY SUPPORT PROVIDED ICELAND AND GREENLAND BEING AIR POUCHED.

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## Message Attributes

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**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Decaption Note:**  
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**Disposition Approved on Date:**  
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**Disposition Date:** 22 May 2009  
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**Secure:** OPEN  
**Status:** NATIVE  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009